

EXHIBIT C

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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA

4 v.

05 Cr. 621 (KMK)

5 ALBERTO VILAR
5 GARY TANAKA,

Hearing

6 Defendant.

6 -----x

New York, N.Y.
July 10, 2006
9:45 a.m.

8 Before:

9 KENNETH M. KARAS

District Judge

11 MICHAEL J. GARCIA
11 United States Attorney for the
12 Southern District of New York
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13 New York, N.Y. 10007
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14 MARC O. LITT
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4 A01144105, one of the boxes that you supplied to us with
 5 documents taken from the Amerindo offices on Park Avenue.
 6 MR. HOFFMAN: May I approach, your Honor?
 7 THE COURT: You may.
 8 Q. Let me ask you to look at that and tell me if those
 9 documents seized are from an entity not named in paragraph B as
 10 in "boy", "Amerindo Internet Fund."
 11 A. That's correct.
 12 Q. Parenthetically, if there are documents of brokerage
 13 accounts.
 14 A. Yes, but it is covered on another paragraph in the
 15 affidavit.
 16 Q. Did you not tell us a moment ago that other than those
 17 brokerage accounts named in paragraph B, did you not tell us
 18 this two minutes ago that you did not have probable cause --
 19 A. I did not submit probable cause.
 20 Q. You did not submit probable cause in the affidavit
 21 concerning any other brokerage accounts, correct?
 22 A. That's correct.
 23 Q. From the same box I am bringing you --
 24 MR. HOFFMAN: If I may approach, your Honor?
 25 THE COURT: You may.

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67arvilh Fraterrigo - cross
 1 Q. -- documents seized by the government from an entity,
 2 brokerage account, called Dextra, D as in "dog" E-X-T as in
 3 "Tom" R-A II. I ask you to look at that and tell me if in fact
 4 that is a file with brokerage accounts from an entity called
 5 Dextra II.
 6 A. That's correct.
 7 Q. Again, that is not one of the entities named in paragraph
 8 B, page 8, that we just talked about, correct?
 9 A. That's correct.
 10 Q. That would fall into the category, as you said a moment
 11 ago, of brokerage accounts other than those named in paragraph
 12 B for which you did not submit probable cause in the affidavit,
 13 correct?
 14 A. That's correct.
 15 Q. Let me show you from the same box of documents seized by
 16 the government a file for a company called O-L-A-F as in
 17 "Frank" S as in "Sam" --
 18 THE COURT: Do you have a bunch of them? Why don't
 19 you show them all to her at once and move this along.
 20 MR. HOFFMAN: I think that's it from this box.
 21 THE COURT: OK. You were spelling Olafson. Go ahead.
 22 Q. O-L-A-F as in "Frank" S as in "Sam" O-N as in "Nancy."
 23 Would this also be documents from a brokerage account not named
 24 in paragraph B as in "boy" on page 8 and one of those accounts
 25 for which you have told us there was no probable cause to seize
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67arvilh Fraterrigo - cross
 1 the documents?
 2 A. That's correct, no.
 3 Q. Correct?
 4 A. I did not submit probable cause.
 5 Q. You did not submit probable cause to seize these documents,

6 correct?
 7 A. Correct.
 8 Q. Let me ask you this. Since I am not prepared to do these
 9 in bulk, have you gone through the documents in the various
 10 boxes that you supplied to the defense that were brought here
 11 in court?
 12 A. Yes.
 13 Q. Would it be accurate to say that there are a number of
 14 brokerage accounts in addition to the ones I just showed you
 15 whose documents were received which accounts were not named in
 16 paragraph B as in "boy" page 8 and for which there was no
 17 probable cause submitted to the magistrate?
 18 A. They were seized, but they were seized under a different
 19 paragraph of the affidavit. I had authority to seize it.
 20 Q. I am not asking you whether or not there was a paragraph
 21 that gave you authority to seize a whole bunch of things. That
 22 is not my question.
 23 A. OK.
 24 Q. My question is, as with the ones I just showed you, that
 25 there are other brokerage accounts that were seized that are
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67arvilh Fraterrigo - cross
 1 not named in paragraph B as in "boy" on page 8 of the affidavit
 2 and for which, as with the others you just testified to, there
 3 was no probable cause to support the seizure, correct?
 4 A. There was no probable cause in the --
 5 Q. In the papers submitted to the magistrate?
 6 A. That's correct.
 7 Q. Thank you. In the same paragraph B as in "boy," page 8, if
 8 you look three lines up from the bottom of that paragraph, you
 9 stated that there was probable cause to seize, quote, other
 10 documents reflecting or relating to securities transactions
 11 entered into on behalf of clients by any current or former
 12 Amerindo entity, affiliate, principal, officer, and employee.
 13 Do you see that?
 14 A. Yes.
 15 Q. Would it be accurate to say that other than the five
 16 individuals previously mentioned, there was no probable cause
 17 to seize documents reflecting or relating to securities
 18 transactions entered into on behalf of clients other than those
 19 five that was put before the magistrate, correct?
 20 A. That's correct.
 21 Q. And there was no probable cause that was put before the
 22 magistrate to seize any documents other than concerning the
 23 five individuals we have mentioned that involved any current or
 24 former Amerindo entities, affiliates, principals, officers, and
 25 employees, correct?

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67arvilh Fraterrigo - cross
 1 A. That's correct.
 2 Q. In terms of your instructions to the individuals executing
 3 the search warrant, would it be accurate to say that you never
 4 instructed them to limit their seizure of materials from the
 5 Park Avenue office to materials concerning the five individuals
 6 we have been talking about?
 7 A. No, it did not.

16 A. I don't believe so.
 17 Q. You were the case agent on the case, right?
 18 A. Yes.
 19 Q. And you were the affiant, right?
 20 A. Yes, I am.
 21 Q. And it appeared from the questions that Judge Maas was
 22 asking he was struggling a bit with some of the factual
 23 allegations that was in the warrant, correct?
 24 MS. McEVOY: Objection.
 25 THE COURT: Sustained as to form.
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67ASVILAR2 Fraterrigo - cross
 1 Q. Well, Judge Maas was asking questions about inferences that
 2 could be drawn from the affidavit, isn't that correct?
 3 MS. McEVOY: Objection.
 4 THE COURT: Do you want to ask her what kind of
 5 questions he asked?
 6 Q. Sure.
 7 A. I don't recall the questions he asked. I recall he asked a
 8 question and I recall he pointed to the chart in Gary Tanaka's
 9 complaint. That is all I recall.
 10 Q. And you agree with me that had you actually written down at
 11 the time what he had asked or what Mr. Litt had said, it may
 12 very well have refreshed your memory so that you actually could
 13 today testify about what happened that day, correct?
 14 A. Yes, that is correct.
 15 Q. Is it your testimony that you do recall Judge Maas actually
 16 asking questions?
 17 A. I recall he asked a question. I don't know how many. He
 18 was referring to the chart. That is all I recall.
 19 Q. Do you recall whether he was asking it of you or asking it
 20 of Mr. Litt?
 21 A. Mr. Litt.
 22 Q. And you recall Mr. Litt, as you say, pointing to the chart
 23 and you recall not necessarily what he said but do you recall
 24 him actually saying anything?
 25 A. I recall him saying something but I don't recall what it
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67ASVILAR2 Fraterrigo - cross
 1 was. I saw him answering.
 2 Q. And you also I believe testified on direct examination that
 3 you had supervised the search of Amerindo U.S. along with team
 4 leader Feiter, correct?
 5 A. That is correct.
 6 Q. Approximately how many searches have you supervised?
 7 A. I would say approximately 20.
 8 Q. Is it essentially the same 20 that you were the affiant on
 9 the search warrant?
 10 A. Yes.
 11 Q. I want to ask you just a couple of questions about your
 12 preparation for your testimony.
 13 First, let me just ask you, in between the lunch
 14 break, did you have any conversations with anyone relating to
 15 your testimony at this hearing?
 16 A. No, I did not.
 17 Q. Did you have any conversations with anyone even just

18 generally relating to testifying?
 19 A. Yes.
 20 Q. Who did you speak to?
 21 A. My husband.
 22 Q. And without getting into the substance of the conversation
 23 with your husband, did the conversation at all touch upon the
 24 facts or circumstances of this case we are here on?
 25 A. No, it did not.

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67ASVILAR2 Fraterrigo - cross

1 Q. I might as well ask you this now, the burning question is
 2 who is R. Fraterrigo?
 3 A. My husband, Robert Fraterrigo.
 4 Q. And so your husband was actually present at the search of
 5 Amerindo U.S.?
 6 A. Yes.
 7 Q. Prior to your testimony and your direct examination, what
 8 did you do to actually prepare to testify?
 9 A. I reviewed my notes. I reviewed my complaints. I reviewed
 10 the search warrant affidavit. I reviewed my investigative
 11 notes, and my inventory forms.
 12 Q. When you say your investigative notes, what does that mean?
 13 A. I mean my 3500 material, what has been provided.
 14 Q. Basically the MOIs, the memorandum of interviews?
 15 A. No, my notes that I had of the search, my 3500.
 16 Q. I take it you also met with the government prior to
 17 testifying, correct?
 18 A. Yes, I did.
 19 Q. Approximately how many times did you meet with the
 20 government in preparing to testify?
 21 A. Several times.
 22 Q. How much is several?
 23 A. Maybe 5 or 6, 7 times, probably more than that.
 24 Q. Approximately how much time would you say you spent with
 25 them during each one of those sessions?

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67ASVILAR2 Fraterrigo - cross

1 A. Several hours.
 2 Q. And during those sessions did you rehearse your direct
 3 examination?
 4 A. We went over my direct examination.
 5 Q. Did you also go back and -- withdrawn.
 6 Inspector Fraterrigo, you were asked a number of
 7 questions about inventory and exhibits that were obtained from
 8 Alberto Vilar's office, do you recall that?
 9 A. Yes.
 10 Q. And do you recall during one part of your direct
 11 examination Ms. McEvoy asking you about a number of items on
 12 the inventory sheets and asking you to actually recite what
 13 those references on the inventory sheets referred to, do you
 14 recall that?
 15 A. Yes.
 16 Q. And do you recall specifically in one instance Ms. McEvoy
 17 had asked you if you could recall and recount for the court
 18 relating to what was indicated as N6 what three red and black
 19 ledger notebooks contained? Do you recall her asking you